

OPEN MEETING ITEM



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COMMISSIONERS
MARC SPITZER - Chairman
JIM IRVIN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON

JAMES G. JAYNE
Interim Executive Secretary

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ARIZONA CORPORATION COMMISSION

2003 JUL -8 P 4: 03

AZ CORP COMMISSION
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DATE: July 8, 2003

DOCKET NOS: G-01551A-02-0425 and G-01970A-02-0425

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Jane Rodda. The recommendation has been filed in the form of an Opinion and Order on:

**SOUTHWEST GAS CORPORATION
(WAIVER OF RULES/TRANSFER OF ASSETS/CC&N)**

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

JULY 17, 2003

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

July 22 and 23, 2003

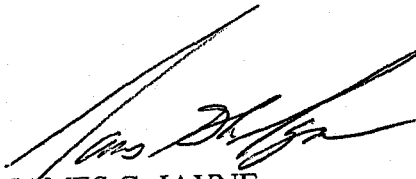
For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

Arizona Corporation Commission

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JAMES G. JAYNE
INTERIM EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MARC SPITZER, Chairman
4 JIM IRVIN
5 WILLIAM A. MUNDELL
6 JEFF HATCH-MILLER
7 MIKE GLEASON

8 IN THE MATTER OF THE APPLICATION OF
9 SOUTHWEST GAS CORPORATION FOR
10 APPROVAL OF ACQUISITION PLAN AND, IF
11 APPROPRIATE, WAIVER OF SELECTED
12 PROVISION OF THE AFFILIATE RULES.

DOCKET NO. G-01551A-02-0425

DOCKET NO. G-01970A-02-0425

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING:

February 24, 2003 and March 3, 2003

11 PLACE OF HEARING:

Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE:

Jane L. Rodda

13 APPEARANCES:

Mr. Andrew Bettwy, Attorney, on behalf of
Southwest Gas Corporation;

Mr. Timothy Berg, Fennemore Craig, on behalf
of Black Mountain Gas;

Mr. Daniel Pozefsky, Attorney, on behalf of the
Residential Utility Consumer Office;

Mr. Walter Meek, President, Arizona Utility
Investors Association; and

Ms. Lisa Vandenberg and Jason Gellman, Staff
Attorneys, Legal Division, on behalf of the
Utilities Division of the Arizona Corporation
Commission.

21 **BY THE COMMISSION:**

22
23 Southwest Gas Corporation ("SWG") is a public service corporation that is engaged in the
24 business of purchasing, transporting and distributing natural gas in portions of Arizona, Nevada and
25 California. SWG serves over 800,000 customers in Arizona, a rapidly growing service territory that
26 adds approximately 30,000 new customers per year. In 2001, SWG had total assets of \$2.3 billion,
27 generated revenues of \$1.4 billion and earned a net income of \$37 million.

28 Black Mountain Gas Company ("BMG") is a public service corporation that provides retail

1 natural gas and propane service within portions of Arizona. BMG serves approximately 7,260
2 customers in and around Cave Creek, Carefree, Phoenix and Scottsdale ("Cave Creek Division"), and
3 approximately 2,400 propane customers in Page, Arizona ("Page Division"). Xcel Energy, Inc.
4 ("Xcel"), a Minnesota corporation, owns 100 percent of the outstanding shares of BMG.

5 On June 6, 2002, SWG filed an application to approve the acquisition of the common stock of
6 BMG and subsequent transfer of assets and Certificate of Convenience and Necessity of BMG to
7 SWG, and dissolution of BMG within 12 months.

8 On February 4, 2003, BMG nailed notice of the proceeding to its customers pursuant to
9 Procedural Order dated September 11, 2002. On January 28, 2003, SWG filed notice that it had
10 published notice in newspapers of general circulation within its Arizona service territories in
11 conformance with the September 11, 2002 Procedural Order. The Commission did not receive any
12 comments in response to the notice and no customers appeared at the hearing to provide public
13 comment.

14 The Commission granted intervention to the Residential Utility Consumer Office ("RUCO"),
15 BMG, the Arizona Utility Investors Association ("AUIA") and Local Union 769, International
16 Brotherhood of Electrical Workers, AFL-CIO ("IBEW Local 769").¹ In its September 11, 2002
17 Procedural Order, the Commission adopted the parties' proposed schedule for pre-filed written
18 testimony and set the matter for hearing on February 24, 2003. The hearing convened as scheduled
19 on February 24, 2003 and continued on March 3, 2003. The parties filed Closing Briefs on April 4,
20 2003.

21 Pursuant to the proposed Acquisition Plan, SWG would purchase all of the outstanding shares
22 of stock in BMG from Xcel, and within twelve months of consummating the purchase, would transfer
23 BMG's assets to SWG and dissolve BMG. SWG proposes the following:

- 24 1. BMG's current margin rates in the Cave Creek Division would remain in effect unless
25 and until changed in a general rate case, with the objective of having uniform rates
26 established for the customers of SWG and the customers of BMG in the Cave Creek
27

28 ¹ At the February 20, 2003 pre-hearing conference, IBEW Local 769 requested to withdraw from participating in the proceedings.

1 Division in the next SWG general rate case;

- 2 2. BMG's current terms and conditions of service in the Cave Creek Division, including
3 miscellaneous charges, would remain in effect, unless and until changed with prior
4 Commission approval, except that any optional services provided by SWG, which are
5 not currently provided by BMG, would be made available to customers of BMG in
6 accordance with the charges set forth in SWG's Commission-approved tariff;
- 7 3. Immediately following consummation of the stock purchase transaction, the respective
8 gas cost balancing accounts would be frozen; and on a going forward basis, there
9 would be one gas cost applicable to both SWG and BMG's Cave Creek Division; and
10 SWG would make a filing with the Commission seeking approval of a mechanism to
11 surcharge or surcredit the balances in the frozen gas cost balancing accounts; and
- 12 4. The Page Division of BMG would continue to be operated under BMG's current rates
13 and terms and conditions of service until SWG's disposition of the propane properties.

14 Staff Position

15 Staff claims that although SWG has alleged that its acquisition of BMG will provide a number
16 of operating efficiencies, create a higher level of customer service, operational efficiency and pipeline
17 safety within the current BMG territory, Staff believes that SWG has not provided testimony to
18 support its claims. Staff notes that SWG has not reviewed BMG's property, maps or records, nor
19 conducted any comparisons or studies to demonstrate any of the claimed benefits of the transaction.
20 After reviewing the proposed transaction, Staff determined that the acquisition, as proposed, was not
21 obviously in the public interest without conditions that would provide a substantial and immediate
22 benefit to consumers.

23 Staff argues that SWG did not respond to Staff's concerns about (1) potential harm to
24 ratepayers from additions to rate base if the acquisition adjustment is not addressed in the current
25 docket; (2) potential increased gas costs to Cave Creek customers if they become SWG customers
26 given the currently planned changes on capacity reallocation by the Federal Energy Regulatory
27 Commission ("FERC"); and (3) did not provide evidence of alleged Cave Creek customer benefits,
28 operating efficiencies, higher levels of customer service, operations and pipeline safety. Staff

1 believes a showing of a substantial immediate benefit is needed to counter-balance the potential harm
2 and to demonstrate that the transaction is in the public interest.

3 Staff recommends the following 14 conditions:

- 4 1. SWG not seek future rate recovery of any acquisition adjustment related to the
5 acquisition.
- 6 2. SWG not seek recovery of any costs associated with the acquisition, including internal
7 corporate costs, in any future Arizona rate proceeding.
- 8 3. SWG not allow the quality of service in either the current SWG or BMG service
9 territories to diminish as a result of the acquisition. The number of service complaints
10 should not increase, the response time to service complaints should not increase, and
11 service interruptions should not increase.
- 12 4. SWG not use any utility plant or other property, that is used or necessary for the
13 provision of utility service, for any unregulated activity unless SWG maintains
14 appropriate books and records of account detailing the nature of such unregulated
15 activity and provides appropriate allocations between activities relating to SWG's
16 provision of utility service and the unregulated activity, SWG's books and records
17 concerning all unregulated activities shall be subject to the Commission's review and
18 shall be made available in the Phoenix metropolitan area or, at the Commission's
19 request, where the records are maintained, on ten days' notice.
- 20 5. BMG be dissolved as a corporate entity on or before July 1, 2004. At the completion
21 of the dissolution, BMG shall file a notice in this docket attesting to the specific date
22 that the BMG dissolution was completed (herein referred to the "noticed date"). Upon
23 the noticed date of dissolution, the transfer of BMG's CC&N to SWG shall be deemed
24 effective. As well, SWG's authorized natural gas rates and charges in their entirety
25 shall be deemed the authorized rates and charges for Cave Creek Division customers
26 effective the noticed date of BMG's dissolution. If BMG fails to complete dissolution
27 by July 1, 2004, as discussed above, BMG shall file a sufficient rate application with
28 the Commission on or before July 1, 2004. Staff notes that this recommendation shall

1 not limit Staff's ability to initiate a rate case at any time. Furthermore, in no case shall
2 the currently authorized BMG rates and charges remain in effect beyond July 1, 2004,
3 without BMG initiating a sufficient rate application with the Commission.

4 6. The Cave Creek Division PGA ("Purchased Gas Adjustor") mechanism shall be
5 merged with SWG's PGA mechanism on the date of BMG's completed dissolution.

6 7. If SWG fails to sell BMG's Page Propane Division at or prior to the perfected
7 dissolution of BMG, SWG shall take all appropriate and timely steps to ensure rates
8 and charges are in place for the current BMG propane customers, such as: SWG filing
9 a request to charge BMG's existing rates, or SWG filing a report amending SWG's
10 filing in this case clarifying that BMG as a corporate entity would remain intact for the
11 sole purpose of providing propane service as BMG's Page Division currently provides
12 its propane operations.

13 8. If SWG fails to file for Commission approval of the sale of BMG's Page Division
14 within 18 months of the Commission's approval of SWG's acquisition of BMG, the
15 Page Division should, within 19 months of a Decision in this case, make a filing for
16 Commission approval to begin offering the Page Division propane customers service
17 options that are currently available to SWG's customers. Such services include, but
18 are not limited to, a low-income discount tariff for residential customers, a balanced
19 payment plan option, an online bill payment option, and applicable demand-side
20 management programs.

21 9. SWG shall continue to maintain the existing emergency isolation valves in all current
22 BMG service areas.

23 10. During the 2002 Code Compliance Audit, BMG stated that it was installing additional
24 emergency isolation valves (approximately 34). If at the time of the stock transfer
25 from Xcel to SWG, BMG has not completed the installation of all currently planned
26 valves of the Cave Creek Division, SWG shall complete the installation of those
27 valves no later than May 1, 2003.

28 11. SWG shall not allow the acquisition to diminish staffing that would result in service

and/or safety degradation in either the current SWG or BMG service territories.

12. SWG shall continue to maintain fully operational local field offices in the cities of Cave Creek and Page, as appropriate, to maintain the quality of service.

13. SWG shall continue BMG's current policy of not using contract personnel for the performance of underground pipeline locating.

14. SWG or BMG shall complete all mapping of the BMG pipeline system no later than May 1, 2003, as agreed to by BMG during its 2002 Code Compliance Audit.

Staff was concerned that SWG expressed a desire to be able to change the emergency isolation plan of the current BMG system without any physical changes to the system that would permit such alteration. Staff was also concerned about potential reductions in staffing and office locations and the effect on safety within the Cave Creek area. Because at the time of Staff's testimony BMG had not completed mapping its service area, Staff had concerns about using contract personnel to conduct line locating activities, as these workers would not be as familiar with the BMG system as employees would be. Staff also believed that SWG's request to extend the deadline to complete the BMG mapping project would be potentially dangerous to the Cave Creek community. Staff intended recommendations Nos. 3, 9, 10, 11, 12, 13 and 14 to protect the Cave Creek community and customers from a possible decline in the quality of service and safety that the area currently enjoys.

In addition, Staff recommends that upon BMG's dissolution, SWG begin charging SWG's authorized rates and charges², and that if BMG is not dissolved by July 1, 2004, then BMG should file a rate application. Staff explains this recommendation is designed to protect customers from paying substantially higher rates than nearby, otherwise identical SWG customers, and to protect against over-earning as a motivation to fail to meet the deadline to dissolve by July 1, 2004. Staff believes that SWG has not provided any compelling evidence why the customers acquired from BMG should not pay the same rates as existing SWG customers, and believes such a showing is essential considering SWG stands to "reap a windfall" from its customers. The differential between

² BMG's rates are higher than SWG's rates.

1 SWG's rates and BMG's rates would generate over \$1 million per year for SWG. See Staff Brief at
2 p. 6. Staff believes it is incongruous for SWG to tout the economies of scale and operational
3 efficiencies that would occur as a result of the transaction, but to oppose passing the alleged cost
4 advantages on to customers.

5 Staff argues that once BMG dissolves, it is lawful to charge SWG's rates within the Cave
6 Creek territory if the Commission finds charging SWG's rates to be necessary to serve the public
7 interest. Staff likens the current transaction with the merger of the companies in Pueblo del Sol
8 Water Company v. Arizona Corporation Commission, 160 Ariz. 285, 772 P.2d 1138 (App. 1988), in
9 which the Court of Appeals upheld the Commission's decision that the buyer had to charge the
10 seller's rates on an interim basis. In Pueblo del Sol, the Commission found that the continuation of
11 the seller's authorized rates was necessary to serve the public interest and made a specific finding that
12 such a rate must be kept in place at the time of transferring the CC&N.

13 Staff asserts that its recommendation to impose SWG's margin rates is consistent with the just
14 and reasonable requirement of Arizona Constitution Article 15 Section 3, because it applies the
15 previously authorized rate of the buyer. Staff alleges that to suggest that the Commission cannot
16 approve use of an applicant's authorized rates in a CC&N matter would be ludicrous and arduous, as
17 it would require a full rate case every time a company extended its territory to provide service to a
18 small outlying pocket of growth.

19 SWG's Position

20 SWG argues the acquisition meets the "public interest" standard promulgated by the
21 Commission's Affiliated Interest Rules. SWG asserts that the Affiliated Interest Rules specifically
22 define the "public interest" standard. Under these rules, the standard of review is to determine if the
23 transaction and/or diversification activity "would impair the financial status of the public utility, or
24 impair the ability of the public utility to provide safe, reasonable and adequate service." See R14-2-
25 803.A, 804.A and 805.A.

26 SWG claims the evidence is uncontraverted that its acquisition of BMG would not impair the
27 financial status of SWG; would not prevent SWG from attracting capital at fair and reasonable terms;
28 and would not impair the ability of SWG to provide safe, reasonable and adequate service.

1 SWG argues that Staff's 14 conditions are unnecessary and punitive, and that Staff has
2 interjected a "public interest" standard that is inconsistent with Commission rules and the applicable
3 provisions of Arizona statutes. According to SWG, Arizona has adopted a "no harm" public interest
4 standard as evidenced by the Court of Appeals holding in the Pueblo Del Sol case. In that case, the
5 Court of Appeals held:

6 A Certificate of Convenience and Necessity (CCN) granting operating
7 authority to a corporation is initially issued by the Commission only upon
8 a showing that its issuance would serve the public interest. [citing cases].
9 It logically follows that prior to approving a transfer of assets and CCN,
10 the Commission should examine all the evidence available to it to
11 determine whether or not the transfer is detrimental to the public interest."
12 772 P.2d at 1139.

13 Thus, SWG asserts the Commission should examine all the evidence available to it to determine
14 whether or not the transfer of BMG stock and transfer of assets is detrimental to the public interest.

15 SWG argues that Staff's recommendation that the BMG rates be reduced outside of a general
16 rate case is confiscatory and violates ratemaking principles. SWG cites Scates v. Arizona
17 Corporation Commission, 118 Ariz. 531, 578 P.2d 612 (1978) and Residential Utility Consumer
18 Office v. Arizona Corporation Commission, 199 Ariz. 588, 20 P.2d 1169 (2001) for the proposition
19 that when increasing or decreasing rates the Commission must consider the overall impact of the rate
20 increase upon the return of the public service corporation. SWG argues that even with the dissolution
21 of BMG, all of its assets, including its tariff sheets, would have been transferred to SWG, and those
22 tariff sheets would continue to embody the Commission-established rate applicable to the customers
23 in BMG's service territories. SWG argues the BMG rates were established as just and reasonable in
24 BMG's 2001 rate case, and were designed to produce a revenue stream sufficient to provide an
25 opportunity to earn a fair return on the fair value of the properties devoted to providing natural gas
26 services to BMG customers.

27 SWG asserts that it will not allow service or safety to suffer after the acquisition and that there
28 is no evidence that a decline would occur. SWG was concerned that some of Staff's
recommendations concerning staffing and maintaining fully operational field offices are vague and
could lead to confusion in the future. SWG believes it is more appropriate for the Commission to
require it to maintain service and safety standards and not tie that requirement to staffing or other

1 necessary business decisions.

2 The original closing date of this transaction was April 30, 2003.³ SWG was concerned that it
3 would not have sufficient time to evaluate BMG's system and be able to comply with Staff's
4 recommendations that isolation valves be installed and mapping completed by May 1, 2003.

5 Finally, SWG believes that a determination of whether the Commission will allow recovery of
6 the acquisition premium or costs of the transaction from ratepayers is more appropriately considered
7 in the context of SWG's ratecase, when any evidence of operating efficiencies will be known and
8 measurable.

9 Black Mountain Gas' Position

10 BMG also argues that Staff's imposition of the 14 conditions to ensure what Staff has
11 characterized as "obvious and significant immediate consumer benefit" misconstrues the applicable
12 standards of review for approval of the SWG's application. BMG argues there is no requirement
13 under Arizona law or Commission rule that there be an "obvious and significant immediate consumer
14 benefit" as Staff suggests in this case. BMG argues that under the Affiliated Interest Rules, the
15 Commission has determined that "public interest" equates to a lack of detriment or "no harm"
16 standard, and that the Commission must approve the transaction unless there is evidence that: (a) the
17 transaction would impair the financial status of a public utility; (b) the transaction would otherwise
18 prevent a public utility from attracting capital at fair and reasonable terms; or (c) the transaction
19 would impair the ability of a public utility to provide safe, reasonable and adequate service.

20 In the current case, BMG asserts that there is no basis for the Commission to adopt additional
21 conditions upon the transfer, as there was no evidence that the transaction would impair the financial
22 status of SWG, that the transaction would prevent SWG from attracting capital at fair and reasonable
23 terms, and no evidence that the transaction would impair SWG's ability to provide safe, reasonable
24 and adequate service within Arizona or in BMG's service territory.

25 BMG argues that Staff's proposal to charge SWG's rates in the BMG territory exceeds the
26 Commission's authority. It asserts that the Commission's rate-making authority is subject to the "just
27

28 ³ SWG and BMG have subsequently extended that deadline.

1 and reasonable” clause of Article 15, Section 3 of the Arizona Constitution. BMG argues that to
2 reduce a utility’s rates, the Commission must ascertain the fair value of the company’s property and
3 employ that value in establishing rates. See Simms v. Round Valley Light & Power Co, 80 Ariz.
4 145, 294 P.2d 378 (1956), and Scates.

5 BMG asserts that the acquisition of BMG by SWG will benefit BMG customers immediately
6 because they will have access to SWG programs that they do not have access to currently, such as
7 summary billing, core aggregation, e-billing, low-income assistance programs, automated account
8 systems, and defined customer-appointment windows.

9 RUCO’s Position

10 RUCO supports approval of SWG’s application. RUCO agrees with SWG that the currently
11 authorized rates and tariffs of BMG’s Cave Creek Division should stay in place until SWG’s next
12 rate case. RUCO states that although it encourages rate reductions in general, it believes that as a
13 matter of public policy and sound regulatory principles, it would be imprudent to change BMG’s
14 rates outside the context of a rate case. RUCO recommends that the Commission maintain stability
15 in rates by maintaining BMG’s rates pending SWG’s next rate case when the Commission can
16 determine SWG’s actual cost to serve the BMG customers.

17 RUCO also supports SWG’s request to defer consideration of the acquisition adjustment to
18 SWG’s next rate case. RUCO states that typically, the premium associated with an acquisition
19 should not be recoverable from ratepayers, as a mere transfer of ownership should not serve to
20 increase rates by inflating rate base. RUCO believes, however, that at the time of filing its next rate
21 case, SWG will have had an opportunity to operate BMG and determine the administrative
22 efficiencies and customer benefits that the acquisition has brought to BMG’s and SWG’s existing
23 customers. At that time, if there are known and measurable efficiencies, the appropriateness of an
24 acquisition adjustment can be made. RUCO asserts it would be contrary to sound public policy to
25 deprive SWG of the opportunity to prove operational and administrative efficiencies. Furthermore,
26 RUCO believes that consideration of the premium in ratemaking treatment will encourage companies
27 to strive towards peak efficiency.

28 AUIA’s Position

1 AUIA notes that the most controversial of Staff's conditions were those that denied the future
2 consideration of an acquisition premium, denied recovery of any costs associated with the acquisition
3 and the imposition of SWG's rates in BMG's service territory after July 1, 2004, and it is these
4 conditions that have the greatest financial impact on the transaction.

5 AUIA disputes Staff's assumption that the first two conditions (preventing future
6 consideration of an acquisition adjustment and recovery of any costs of the acquisition) are in the
7 public interest because they eliminate a potential cost to ratepayers. AUIA believes that Staff is trying
8 "to protect the Commission from itself," and the Commission should not be precluded from
9 considering whether cost recovery is appropriate on a case-by-base basis at a time when the costs and
10 benefits can be quantified. Further, AUIA argues, in considering mergers and acquisitions, the public
11 interest should not be a one-sided measurement, but should result from balancing the costs and
12 benefits that will accrue to customers, plus the furtherance of relevant Commission policy (such as
13 consolidation). AUIA argues that no condition prohibiting cost recovery is automatically in the
14 public interest if it would act to prevent a transaction that would otherwise produce net consumer
15 benefits in the long or short term.

16 AUIA asserts that no Staff witness could articulate any statutory or regulatory requirement
17 that the direct and significant standard must be met in order to find the transaction is in the public
18 interest. AUIA points to a list of consumer service and other benefits that would flow from the
19 acquisition.

20 Finally, AUIA argues that based on established legal precedent (as set in Scates and RUCO v
21 ACC), the Commission cannot change rates and charges for BMG customers outside of a rate case
22 and without a determination of fair value. Furthermore, AUIA asserts BMG's current rates were set
23 only 24 months ago and Staff is not alleging that the rates are too high or unfair. AUIA argues that
24 Staff's alternative condition that if BMG is not dissolved by July 1, 2004, that BMG file a rate case,
25 does not make sense, as much of BMG will have been integrated with SWG's operations. AUIA
26 notes that SWG typically operates on a rate cycle of three to four years and its last rate case was
27 based on a 1999 test year, and although there is no guarantee, it seems probable that SWG would file
28 a rate case in 2004 based on a 2003 test year.

Analysis and Resolution

Public Interest Standard

Staff proposed its 14 conditions in order to provide a significant, immediate and “absolute” benefit to consumers. Staff explains that it is not suggesting that in every case a significant immediate consumer benefit is required in order to find a transfer of assets in the public interest, but in this case because Staff believes “there are so many unknowns that may become detriments it is difficult, (if not impossible) to find the merger in the public interest without significant, identifiable benefits.” Staff Brief at p. 7.

SWG, on the other hand, proposes that the transaction should be approved as in the public interest as long as there is no detriment to its financial condition or ability to maintain service or safety. Other parties support SWG's position, and argue that there is no support in Commission rules, Arizona statutes or case law for Staff's position.

The proposed transaction involves the formation of a subsidiary pursuant to the Affiliated Interest Rules, a transfer of assets pursuant to A.R.S. §40-285, and a transfer and cancellation of CC&N pursuant to A.R.S. § 40-282. Initially, SWG will hold the BMG stock, but within approximately 12 months will transfer BMG's assets to SWG and dissolve BMG as a separate entity.

The Affiliated Interest Rules contemplate that the standard of review is to determine whether the transaction would negatively impact the acquiring company's financial condition or its ability to provide safe, reasonable and adequate service. A.R.S. §40-285 does not provide a specific standard for review, but the Arizona Court of Appeals, in Pueblo del Sol, held that in reviewing the sale and transfer of assets, the Commission must determine if the transfer is "detrimental to the public interest." The Pueblo del Sol case also establishes that the scope of the Commission's consideration of the public interest is broad and that the Commission should consider all the evidence available. The relevant factors in a determination of the public interest are unique in each case, and are broader than the factors specifically set forth in the Affiliated Interest Rules. A.R.S. § 40-282 provides that in conjunction with issuing a Certificate of Convenience and Necessity, the Commission "may attach to the exercise of rights granted by the certificate terms and conditions it deems that the public convenience and necessity require." A.R.S. § 40-282 permits the Commission to attach conditions to

1 a CC&N that are necessary to promote the public interest.

2 The Commission must consider all of relevant standards in considering whether to approve
3 this transaction. The public interest includes the safety and adequacy of service certainly, but also
4 involves the impact of disparate rates, the reasonableness of those rates, the impact of Commission
5 policy on utility operations in the state, advancement of Commission policy goals and legal
6 precedent, as well as other factors. The Commission has the authority to impose conditions on the
7 transaction that mitigate potential harm to the public interest or which may be required by the public
8 necessity and convenience, as those interests are broadly defined. We believe that although Staff
9 couches its recommendations in terms of providing an immediate and substantial consumer benefit
10 which some parties have interpreted as creating a novel standard for reviewing acquisitions, in fact,
11 we find many of Staff's recommendations are terms and conditions required by the public
12 convenience and necessity or to prevent harm to the public interest.

13 Acquisition Adjustment and Cost of Acquisition

14 Conditions Nos. 1 and 2

15 Staff recommends that the Commission preclude SWG from seeking recovery of the
16 acquisition premium paid for BMG and from recovering the costs of the acquisition in its next rate
17 case. All other parties advocate deferring a decision on these issues until the next rate case when
18 SWG will have an opportunity to provide evidence that might support such recovery.

19 We recognize that Staff's position is premised on Staff's belief that it is in the public interest
20 to protect ratepayers from bearing the costs of the transaction in the absence of a showing of
21 significant benefit to consumers. However, we do not believe it is in the public interest to make a
22 final decision on these issues without having all relevant information before us. Until SWG is able to
23 operate the BMG system, we do not know if there will be significant efficiencies that would warrant
24 recovery a portion of the acquisition premium from ratepayers. We do not want to foreclose SWG
25 from being able to bring forth evidence of significant improved efficiencies from acquisitions. To do
26 so might discourage transactions that would benefit the public. Our decision here does not mean that
27 ratepayers should or will bear any portion of the costs associated with this acquisition, only that when
28 the relevant information becomes available, SWG should have an opportunity to show sufficient

1 consumer benefits to justify recovery of the acquisition premium or other costs from ratepayers.
2 SWG will bear the burden of proving clear and quantifiable savings for all ratepayers directly related
3 to the acquisition and SWG's management/operation of the BMG system.

4 SWG's Rates
5 Condition No. 5

6 The most contentious of Staff's proposed conditions is the requirement that SWG charge its
7 margin rates in the BMG service area by July 1, 2004, or file a rate case. Staff believed that because
8 SWG did not adequately address Staff's questions about future benefits to BMG consumers and
9 concerns about maintaining service and safety quality in the BMG area, that SWG should provide an
10 immediate and substantial consumer benefit in the form of lower margin rates. Staff also argued that
11 it is potentially confusing and not in the public interest for neighboring SWG and BMG consumers to
12 pay different rates.

13 SWG's approach to wait to adjust the BMG customers' rates until the next SWG (as yet
14 unscheduled) rate case ignores its own arguments in favor of the transaction. SWG will begin
15 integrating the BMG operations into its own as soon as the Commission approves the acquisition.
16 Such integration will alter the very basis of BMG's current rates which were set based upon that
17 company's rate base, operating costs and return on capital. It is not in the public interest for BMG
18 customers to pay unreasonable rates. Neither do we believe having neighboring customers pay
19 different rates to be in the public interest.

20 We find that it is not in the public interest for current BMG customers to continue to pay the
21 higher BMG margin rates after July 1, 2004. Once the current assets and CC&N are transferred to
22 SWG, and BMG is dissolved, the customers of BMG become customers of SWG. At that point,
23 BMG ceases to exist as a public service corporation and there is no reason to differentiate one SWG
24 customer from another. SWG has not provided evidence that in this case it is reasonable for it to
25 continue charging the rates of a dissolved public service corporation once the acquisition and
26 integration is complete.

27 Cases cited by opponents in support of the contention the Commission cannot impose SWG's
28 rates in the BMG service territory outside of a rate case, do not involve transfers of assets or

1 CC&N's. Thus, as a condition of our approval, SWG shall implement its approved margin rates
2 within the Cave Creek Division of BMG's service territory by July 1, 2004. If SWG believes that it
3 is not earning a reasonable and just rate of return, it has the option of filing a rate case.

4
5 PGA Account
6 Condition No. 6

7 SWG states it will consolidate gas purchases for SWG and BMG as soon as the Commission
8 approves the transaction. SWG advocates freezing the SWG and BMG PGA accounts at the time of
9 the acquisition and either refunding or surcharging customers. Staff recommends merging the PGA
10 accounts at the time BMG is dissolved. Because SWG will begin making gas purchases on a
11 consolidated basis as soon as the transaction is approved, it is reasonable to have the actual cost of
12 gas passed on to customers at that time. Because we do not know the current balances in the
13 companies' respective PGA accounts, we cannot determine how to treat those balances at this time.
14 We find that SWG shall freeze the respective balances, implement a consolidated account on a going
15 forward basis, and shall make a filing with the Commission proposing a mechanism for the refund or
16 recovery of the balances. We are concerned that if the accounts are frozen now, and if there is a
17 significant under-collection in either account, customers may be surcharged when they might not
18 have been if the transaction did not occur. It is not in the public interest for customers of either SWG
19 or BMG to have to pay more for gas as a result of the transaction. We expect SWG and Staff to
20 attempt to reach agreement on a mechanism that minimizes the impact of potential surcharges.

21 Service and Safety Concerns
22 Conditions Nos. 3, 11 and 12

23 Customer service and safety are obvious areas of the public interest. The Commission has a
24 legitimate concern that neither public service nor safety suffer as a result of the proposed acquisition.
25 There was no evidence that either SWG or BMG have anything other than good records of public
26 safety. SWG asserts that it will not allow service or safety to suffer after it acquires BMG. Although
27 we have no reason to doubt SWG's word, because it is difficult to prove something that hasn't
28 happened yet, it is in the public interest to protect safety and service quality by expressly stating
SWG's promise as a condition of approval.

1 SWG did not object to Staff's recommended Condition No. 3 that provides SWG not allow
2 the quality of service in either the SWG or BMG service territories to diminish as a result of the
3 acquisition, as measured by the number of service complaints, response time and service
4 interruptions. However, it objected to Conditions Nos. 11 and 12 that tie pipeline safety issues to
5 specific business decisions such as staffing or office locations.

6 We find that Staff's Condition No. 3, if modified slightly, is sufficient to promote the public
7 interest in both the areas of public service and safety. Recommended Conditions Nos. 11 and 12
8 were subject to much discussion at the hearing and we believe prone to misunderstanding. Condition
9 No. 3 is drafted as to be easily measured. We find that if this condition is modified to encompass
10 safety issues as well as service quality, Staff's concerns will be addressed and the Commission will
11 not be involved unduly in the daily operations of the company. Thus, we find the following condition
12 is necessary to avoid harm to the public interest:

13 SWG shall not allow the quality of service or safety in either the current
14 SWG or BMG service territories to diminish as a result of the acquisition.
15 The number of service complaints, the response time to service complaints
or emergency incidents, and the number and duration of service
interruptions should not increase.

16 Conditions Nos. 9, 10, 13 and 14

17 Staff also recommends that SWG continue to maintain the existing emergency isolation
18 valves in all current BMG service areas (Condition No. 9); complete installation of the emergency
19 isolation valves by May 1, 2003 (Condition No. 10); not use contract personnel for the performance
20 of underground pipeline locating in the BMG territory (Condition No. 13); and complete all mapping
21 of the BMG pipeline system no later than May 1, 2003 (Condition No. 14). Because at the time of
22 the hearing, SWG had not had an opportunity to review specifics of the BMG system, it did not want
23 to commit to maintaining specific valves or installing valves or completing a mapping project on such
24 a short timeline. In addition, SWG argued it should be able to employ contract personnel in the BMG
25 territory as it would anywhere within its service territory. SWG asserts that in 2002, it maintained a
26 99.97 percent accuracy in line locations in its Central Arizona Division using contract line-locating
27 employees for the majority of the locates, and employing SWG oversight and procedures. Because
28 SWG uses an electronic mapping system, SWG requested an additional 18 months, or December 31,

1 2004, to complete the mapping of the BMG system.

2 We find that Staff's recommendations with respect to emergency valves, and mapping are
3 reasonable and designed to protect safety within the BMG territory. Staff's testimony clarified that
4 its recommendation against using contract personnel for line locating should only apply until the
5 BMG mapping project is complete. Without accurate maps, Staff believed it more dangerous to use
6 personnel less familiar with the system than employees who would have a greater knowledge.

7 BMG's witness testified that the mapping and the valve installation projects would likely be
8 complete by May 1, 2003. Thus, SWG's objection to the May 1, 2003 deadline may be moot. In any
9 case, because SWG did not have a familiarity with the BMG system, it is not prudent to excuse SWG
10 from following through with BMG's commitments to install emergency valves or complete mapping.
11 Even if SWG cannot transfer all the BMG maps to its electronic system on a short time frame, we do
12 not believe it is prudent to delay the mapping project. Paper maps are better than no maps.

13 Because the May 1, 2003, deadline has already passed, if BMG has not completed these
14 projects when the transaction closes, SWG should have a reasonable time to complete them. Thus, in
15 the event the projects are not complete when SWG consummates the acquisition, SWG should have
16 an additional 60 days to complete the emergency valve installation and BMG system maps.

17 In addition, as written, Staff's recommended Condition No. 9 could be read to require
18 Southwest Gas Corporation to maintain the current configuration of the BMG isolation valves in
19 perpetuity. There is evidence that as a distribution system undergoes changes, it is appropriate to
20 review and revise the emergency valve configuration. Staff's recommendation should be interpreted
21 to require the preservation of the current valve configuration to protect the public safety until SWG
22 can integrate the system into its existing system and make informed decisions concerning the
23 continued appropriateness of individual valves under all applicable safety standards. Consequently,
24 we adopt Staff's recommendation, but modify it slightly to allow SWG flexibility concerning system
25 design once it has integrated the system into its existing system.

26 It is not certain that all BMG employees will accept SWG's offer of employment, or how
27 many BMG employees familiar with the system will be available for line locating duties. SWG has a
28 good record of line locating, and there does not appear to be sufficient reason to preclude the use of

1 appropriately trained and knowledgeable contract personnel within the BMG territory. Under the
2 circumstances we do not find that Staff's recommended Condition No. 13 is necessary to protect the
3 public interest. It is likely that the mapping project will be complete at the time of acquisition and
4 this condition will be unnecessary.

5 Unregulated Activities and Production of Books and Records
6 Condition No. 4

7 Staff recommends that SWG maintain appropriate books and records and that it make such
8 records available for inspection in Phoenix, if Staff requests. SWG agrees with Staff regarding the
9 necessity to keeping appropriate books and records detailing the activities of SWG's regulated and
10 unregulated activities, regardless of whether such requirement is made a condition of this Order.
11 SWG objected to having to make books and records available in Phoenix in all situations when under
12 some circumstances it might be burdensome to do so and make more sense for Staff to review such
13 records where they are kept in the normal course of business.

14 We find this condition is reasonable and merely formalizes what SWG does, and is required
15 to do, in any case. SWG and Staff have always been able to work out the logistics of record
16 production in the past. To the extent that SWG finds an individual request for records to be
17 unreasonably burdensome, we expect it to raise its concerns first with Staff, but do not foreclose it
18 from raising the issue for resolution by the Hearing Division.

19 Page Division
20 Conditions Nos. 7 and 8

21 SWG plans to sell BMG's Page Propane Division. Staff recommends that if SWG has not
22 sold the Page Division prior to dissolving BMG, that SWG take the necessary steps to ensure rates
23 are in place for the Division, and that if it cannot sell the Division within 19 months of the effective
24 date of this Decision, that SWG seek Commission approval to make existing SWG service options,
25 such as low-income discount, balanced payment plan option and online bill paying, available to the
26 Page customers.

27 SWG indicated that the primary reason that it would not be able to dissolve BMG by July 1,
28 2004, would be its inability to sell the Page Propane Division. Thus, some of Staff's concerns about
not having approved rates in place if BMG is dissolved prior to the sale of the Page Division are

unlikely. However, as drafted, Staff's recommendations for the Page Division are reasonable, and address the possibility that SWG may not find an appropriate buyer in the near future. We find that Staff's recommended Conditions Nos. 7 and 8 are in the public interest.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. SWG is a public service corporation that is engaged in the business of purchasing, transporting and distributing natural gas in portions of Arizona, Nevada and California. SWG serves over 800,000 customers in Arizona.

2. BMG is a public service corporation that provides retail natural gas and propane service with portions of Arizona. BMG serves approximately 7,260 customers in and around Cave Creek, Carefree, Phoenix and Scottsdale. BMG serves approximately 2,400 propane customers in Page, Arizona. Xcel, a Minnesota corporation, owns 100 percent of the outstanding shares of BMG.

3. On June 6, 2002, SWG filed an application to approve the acquisition of the common stock of BMG and subsequent transfer of assets and Certificate of Convenience and Necessity of BMG to SWG, and dissolution of BMG within 12 months.

4. Pursuant to Procedural Order dated September 11, 2002, the Commission established a schedule for filing testimony and set the matter for hearing.

5. On February 4, 2003, BMG mailed notice of the hearing to its customers. On January 28, 2003, SWG filed certification that it had published notice of the hearing in newspapers of general circulation with in its Arizona service territory in accordance with the September 11, 2002 Procedural Order. The Commission did not receive comments from the public concerning the proposed transaction.

6. The Commission granted intervention to RUCO, BMG, AUIA and the IBEW Local 769.

7. The hearing convened on February 24, 2003 and continued on March 3, 2003.

8. The parties filed Closing Briefs on April 4, 2003.

1 9. Pursuant to the proposed Acquisition Plan, SWG would purchase all of the
2 outstanding shares of stock in BMG from Xcel, and within twelve months of the consummation of
3 the stock purchase would transfer BMG's assets to SWG and dissolve BMG.

4 10. SWG plans to sell BMG's Page Division. Its ability to sell the Page Division will
5 affect whether it is able to dissolve BMG in twelve months as anticipated.

6 11. The addition of BMG's Cave Creek Division will add approximately 7,900 new
7 customers to SWG's Arizona customer base, the equivalent to the number of customers SWG adds
8 every 90 days. The BMG customers will comprise approximately one percent of SWG's Arizona
9 customer base.

10 12. SWG has lower margin rates than BMG, and at the time of the hearing had a lower
11 cost of gas.

12 13. There is no evidence that either SWG or BMG have anything other than good service
13 quality and safety records.

14 14. A decline in service quality or safety in either the SWG or BMG service territories as
15 a result of the acquisition would be detrimental to the public interest. Consequently, it is reasonable
16 to condition the acquisition as follows: SWG shall not allow the quality of service or safety in either
17 the current SWG or BMG service territories to diminish as a result of the acquisition. The number
18 of service complaints, the response time to service complaints or emergency incidents, and/or
19 service interruptions should not increase.

20 15. At the time of the hearing BMG had not completed mapping its system. In addition,
21 BMG committed to installing additional emergency isolation valves. BMG agreed to complete
22 mapping and the installation of the isolation valves by May 1, 2003. BMG expected to meet the
23 agreed upon deadline.

24 16. To protect the public safety, it is reasonable to condition the acquisition on SWG
25 completing the mapping and valve installation projects within 60 days of the effective date of this
26 Decision.

27 17. Upon consummation of the acquisition, SWG will begin integrating and consolidating
28 the operations, including gas purchasing, of SWG and BMG. SWG asserts the acquisition is likely

1 to result in operational efficiencies.

2 18. SWG has not provided evidence that in this case it is reasonable for it to continue
3 charging the rates of a dissolved public service corporation once the acquisition and integration is
4 complete.

5 19. It is not in the public interest for customers in the BMG territory to pay rates that are
6 not reasonable.

7 20. To prevent harm to the public interest from unreasonable rates, it is reasonable to
8 condition approval of the transaction on SWG implementing its authorized rates in the current BMG
9 service area upon the dissolution of BMG and no later than July 1, 2004.

10 21. The Commission makes no finding at this time as to the reasonableness of SWG's
11 future recovery of the costs of the transaction or an acquisition adjustment, however, the
12 Commission places SWG on notice that it will bear the burden of proving clear and quantifiable
13 savings for all ratepayers directly related to the acquisition and SWG's management and operation
14 of the BMG system.

15 22. SWG will consolidate the gas purchases of SWG and BMG as soon as the
16 Commission approves the transaction. Thus, it is reasonable for SWG to freeze the respective PGA
17 balances and implement a consolidated PGA account on a going forward basis.

18 23. The parties did not present evidence on the balances in the companies' PGA accounts.
19 In making a filing for approval of a mechanism for the return or collection of amounts currently in
20 the companies' PGA accounts, SWG should attempt to minimize the impact of potential surcharges.

21 24. The following Staff recommendations are reasonable to protect the public interest:

- 22 a. SWG shall dissolve BMG no later than July 1, 2004. At the completion of the
23 dissolution, SWG shall file a notice in this docket attesting to the specific date
24 that the BMG dissolution was completed. Upon the noticed date of
25 dissolution, the transfer of BMG's CC&N to SWG shall be deemed effective.
26 As well, SWG's authorized natural gas rates and charges in their entirety shall
27 be deemed the authorized rates and charges for Cave Creek Division customers
28 effective the noticed date of BMG's dissolution.

- 1 b. SWG not use any utility plant or other property, that is used or necessary for
2 the provision of utility service, for any unregulated activity unless SWG
3 maintains appropriate books and records of account detailing the nature of such
4 unregulated activity and provides appropriate allocations between activities
5 relating to SWG's provision of utility service and the unregulated activity,
6 SWG's books and records concerning all unregulated activities shall be subject
7 to the Commission's review and shall be made available in the Phoenix
8 metropolitan area or, at the Commission's request, where the records are
9 maintained, on ten days notice.
- 10 c. If SWG fails to sell BMG's Page Propane Division at or prior to the perfected
11 dissolution of BMG, SWG shall take all appropriate and timely steps to ensure
12 rates and charges are in place for the current BMG propane customers, such as:
13 SWG filing a request to charge BMG's existing rates, or SWG filing a report
14 amending SWG's filing in this case clarifying that BMG as a corporate entity
15 would remain intact for the sole purpose of providing propane service as
16 BMG's Page Division currently provides its propane operations.
- 17 d. If SWG fails to file for Commission approval of the sale of BMG's Page
18 Division within 18 months of the Commission's approval of SWG's
19 acquisition of BMG, the Page Division should within 19 months of a Decision
20 in this case make a filing for Commission approval to begin offering the Page
21 Division propane customers service options that are currently available to
22 SWG's customers. Such services include, but are not limited to, a low income
23 discount tariff for residential customers, a balanced payment plan option, an
24 online bill payment option, and applicable demand-side management
25 programs.

CONCLUSIONS OF LAW

- 27 1. SWG and BMG are public service corporations within the meaning of Article XV of
28 the Arizona Constitution and A.R.S. §§ 40-282 and 40-285.

2. The Commission has jurisdiction over SWG and BMG and of the subject matter of the applications.

3. Notice of the application was given in accordance with the law.

4. There is a continuing need for gas utility service in BMG's certificated area.

5. SWG's acquisition of BMG's stock would not impair its financial status or its ability to provide safe, reasonable and adequate service.

6. In the context of a proposed transfer of assets and Certificate of Convenience and Necessity, the Commission should examine all evidence available to it to determine whether or not the transfer is detrimental to the public interest.

7. The Commission has the authority to impose conditions on a Certificate of Convenience and Necessity that are required by the public convenience and necessity.

8. SWG is a fit and proper entity to acquire and operate the assets of BMG and provide gas service to BMG's customers.

9. As conditioned herein, SWG's acquisition of BMG's assets and Certificate of Convenience and Necessity is in the public interest and should be approved.

10. The conditions set forth in Findings of Fact Nos. 14, 16, 20, 21 and 23 are reasonably necessary to prevent harm to the public interest and should be adopted.

11. The recommendations set forth in Findings of Fact No. 24 are reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that the Application of Southwest Gas Corporation for Approval of Acquisition Plan is approved subject to the conditions set forth herein.

IT IS FURTHER ORDERED that Black Mountain Gas Company is authorized to transfer its assets and its Certificate of Convenience and Necessity pursuant to the terms of the Acquisition Plan and the conditions set forth herein.

IT IS FURTHER ORDERED that Southwest Gas Corporation shall notify the Commission of the effective date of the acquisition of Black Mountain Gas Company stock and of the dissolution of Black Mountain Gas Company within five days of such dates.

1 IT IS FURTHER ORDERED that upon the completion of the transfer of assets and
2 dissolution of Black Mountain Gas Company, Black Mountain Gas Company's Certificate of
3 Convenience and Necessity shall be cancelled without further Order of the Commission.

4 IT IS FURTHER ORDERED that Southwest Gas Corporation shall dissolve Black Mountain
5 Gas no later than July 1, 2004.

6 IT IS FURTHER ORDERED that Southwest Gas Corporation is authorized to charge the
7 monthly rates and charges of Black Mountain Gas Company within the service territory of Black
8 Mountain Gas through June 30, 2004, and that for any service that Southwest Gas Corporation
9 provides to its customers for which Black Mountain Gas does not have an approved charge,
10 Southwest Gas Corporation shall charge its approved charges.

11 IT IS FURTHER ORDERED that as a condition of our approval, Southwest Gas Corporation
12 shall implement its authorized rates within Black Mountain Gas Company's current service area upon
13 the dissolution of Black Mountain Gas Company and in no case later than July 1, 2004.

14 IT IS FURTHER ORDERED that Southwest Gas Corporation shall freeze the PGA bank
15 balances for Black Mountain Gas Company and Southwest Gas Corporation upon the consummation
16 of the stock purchase transaction, shall maintain one PGA for the combined entities on a going
17 forward basis, and shall make a filing with the Commission seeking approval of a mechanism to treat
18 the balances in the frozen accounts that attempts to minimize the impact of any surcharges.

19 IT IS FURTHER ORDERED that Southwest Gas Corporation shall not allow the quality of
20 service or safety in either current Southwest Gas Corporation or Black Mountain Gas Company
21 service territories to diminish as a result of the acquisition. As such, the number of service
22 complaints, the response time to service complaints or time to resolve emergency incidents and the
23 number and duration of service interruptions shall not increase.

24 IT IS FURTHER ORDERED that Southwest Gas Corporation shall continue to maintain the
25 existing emergency isolation valves in all current Black Mountain Gas service areas until it has fully
26 integrated the Black Mountain Gas system with its own and can make a fully informed decision
27 whether such valve configuration complies with all Federal and State safety requirements as well as
28 Southwest Gas Corporation's internal safety procedures.

1 IT IS FURTHER ORDERED that if at the time of the stock transfer from Xcel to Southwest
2 Gas Corporation, Black Mountain Gas Company has not completed the installation of all currently
3 planned valves of the Cave Creek Division or its mapping project, Southwest Gas Corporation shall
4 complete the installation of those valves and mapping no later than 60 days after the consummation
5 of the acquisition.

6 IT IS FURTHER ORDERED that Southwest Gas Corporation shall not use any utility plant
7 or other property, that is used or necessary for the provision of utility service, for any unregulated
8 activity unless Southwest Gas Corporation maintains appropriate books and records of account
9 detailing the nature of such unregulated activity and provides appropriate allocations between
10 activities relating to Southwest Gas Corporation's provision of utility service and the unregulated
11 activity; Southwest Gas Corporation's books and records concerning all unregulated activities shall
12 be subject to the Commission's review and shall be made available in the Phoenix metropolitan area
13 or, at the Commission's request, where the records are maintained, on ten days notice.

14 IT IS FURTHER ORDERED that if Southwest Gas Corporation fails to sell Black Mountain
15 Gas Company's Page Propane Division at or prior to the perfected dissolution of Black Mountain
16 Gas, Southwest Gas Corporation shall take all appropriate and timely steps to ensure rates and
17 charges are in place for the current Black Mountain Gas Company propane customers, such as:
18 Southwest Gas Corporation filing a request to charge Black Mountain Gas Company's existing rates,
19 or Southwest Gas Corporation filing a report amending Southwest Gas Corporation's filing in this
20 case clarifying that Black Mountain Gas Company as a corporate entity would remain intact for the
21 sole purpose of providing propane service as Black Mountain Gas Company's Page Division
22 currently provides its propane operations.

23 IT IS FURTHER ORDERED that if Southwest Gas Corporation fails to file for Commission
24 approval of the sale of Black Mountain Gas Company's Page Division within 18 months of the
25 Commission's approval of Southwest Gas Company's acquisition of Black Mountain Gas Company,
26 the Page Division should, within 19 months of a Decision in this case, make a filing for Commission
27 approval to begin offering the Page Division propane customers service options that are currently
28 available to Southwest Gas Corporation's customers. Such services include, but are not limited to, a

low income discount tariff for residential customers, a balanced payment plan option, an online bill payment option, and applicable demand-side management programs.

IT IS FURTHER ORDERED that the Commission will defer consideration of any acquisition adjustment or recovery of costs related to the acquisition until Southwest Gas Corporation's next rate case. Southwest Gas Corporation shall have the burden of proving clear and quantifiable savings for all ratepayers directly related to the acquisition and its management and operation of the Black Mountain Gas system.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, JAMES G. JAYNE, Interim Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2003.

JAMES G. JAYNE
INTERIM EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

JR:

1 SERVICE LIST FOR: SOUTHWEST GAS CORPORATION

2 DOCKET NO.: G-01551A-02-0425

3

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